

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. THOMPSON and DEPARTMENT OF THE NAVY
NAVAL AIR STATION, Jacksonville, FL

*Docket No. 03-207; Submitted on the Record;
Issued March 12, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On February 1, 1999 appellant, then a 48-year-old medical record technician, filed a claim alleging that she slipped on a wet floor and fell injuring her neck, back, shoulder and arm. Appellant stopped work on February 1, 1999 and returned to light duty on February 8, 1999.

In support of her claim, appellant submitted a report from Dr. Ronald W. Dennie, Board-certified in physical medicine and rehabilitation, dated February 19, 1999. Dr. Dennie noted a history of appellant's work-related injury. He diagnosed appellant with cervicobrachial strain, lumbosacral strain, right shoulder girdle strain and cervical radiculitis.

On March 1, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. Appellant indicated a recurrence of a neck and shoulder pain due to employment-related injuries sustained in February 1999. Appellant did not stop work.

By letter dated April 5, 2000, the Office requested that appellant submit additional factual and medical evidence to support her claim.

In a decision dated June 6, 2000, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability in March 2000, which was causally related to the accepted employment injury sustained February 1, 1999.

By letter dated June 26, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on February 28, 2001.

By decision dated May 21, 2001, the Office hearing representative set aside the June 6, 2000 decision of the Office and remanded the case for further medical development, specifically

requesting the Office to refer appellant for a second opinion to determine whether her recurrent condition was causally related to the work-related injury of February 1, 1999.

On June 12, 2001 the Office referred appellant to Dr. Thomas R. Dorsey, a Board-certified orthopedist, for a second opinion evaluation. In a report dated July 19, 2001, Dr. Dorsey indicated that he reviewed the medical records provided and performed a physical evaluation. He diagnosed appellant with neck pain, subjective symptoms only and mild right cubital carpal tunnel syndrome. The physician indicated that appellant had no residuals in the cervical spine, lumbar spine, thoracic spine or right shoulder causally related to the work injury of February 1, 1999.

In a decision dated September 13, 2001, the Office denied appellant's claim on the grounds that the Office referral physician determined that there were no residuals of the accepted work-related injury of February 1, 1999 and his opinion was the weight of the evidence.

In a letter dated September 5, 2002, appellant requested reconsideration of the Office decision dated September 13, 2001. Appellant submitted a narrative statement indicating that she still experienced problems with her right shoulder causally related to the February 1, 1999 fall. She indicated that her physician believed she may have a torn rotator cuff, which was causing her pain.

By decision dated September 30, 2002, the Office denied appellant's application for review without conducting a merit review on the grounds that the evidence submitted was cumulative in nature and insufficient to warrant review of the prior decision.

The only decisions before the Board on this appeal is the Office decision September 30, 2002. Since more than one year elapsed from the date of issuance of the Office's September 13, 2001 merit decision, to the date of the filing of appellant's appeal, October 31, 2002, the Board lacks jurisdiction to review this decision.¹

The Board finds that the Office in its September 30, 2002 decision, properly denied appellant's request for reconsideration on the merits under 5 U.S.C. § 8128(a) on the basis that her request for reconsideration did not meet the requirements set forth under section 8128.²

Under section 8128(a) of the Federal Employees' Compensation Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,⁴ which provides that a claimant may obtain review of the merits if her written

¹ See 20 C.F.R. § 501.3(d).

² 5 U.S.C. § 8128.

³ *Id.*

⁴ 20 C.F.R. § 10.606(b) (1999).

application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

“(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or

“(ii) Advances a relevant legal argument not previously considered by the Office; or

“(iii) Constitutes relevant and pertinent new evidence not previously considered by the [Office].”

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.⁵

In the present case, the Office denied appellant’s claim without conducting a merit review on the grounds that the evidence submitted was cumulative and insufficient. In support of her request for reconsideration appellant submitted a narrative statement indicating that she still experienced problems with her right shoulder causally related to the February 1, 1999 fall. She indicated that her physician believed that she may have a torn rotator cuff, which was causing her pain. This evidence was a restatement of appellant’s previous contentions and duplicative of evidence already contained in the record,⁶ and was previously considered by the hearing representative and found deficient. Appellant did not submit any other evidence in support of her reconsideration request. Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.”⁷ Therefore, appellant did not submit relevant evidence not previously considered by the Office.

⁵ 20 C.F.R. § 10.608(b).

⁶ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; see *Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ 20 C.F.R. § 10.606(b).

The decision of the Office of Workers' Compensation Programs dated September 30, 2002 is hereby affirmed.⁸

Dated, Washington, DC
March 12, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁸ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.